May 6, 2005 FILE NO. – 2003/075

SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT 2005 – 004

Saskatchewan Government Insurance

Summary: The Applicant applied under *The Freedom of Information and Protection of Privacy Act* (the "Act") for access to personal information related to his injury file. The government institution originally refused access to 30 documents to the applicant invoking section 17(1)(b)(i) (consultations and deliberations involving employees of government institution). After discussions with the Commissioner, SGI agreed to release almost all of the documents, some with sections severed. Only six documents were not released to the Applicant. The Commissioner upholds the denial of the remaining documents and severed sections on the released records.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c. F-22.01 as am], s. 17(1)(b)(i)

Authorities Cited: Saskatchewan IPC Report No. 2004—001

I BACKGROUND

[1] The Applicant filed an Access to Information Request with Saskatchewan Government Insurance ("SGI" or "the government institution), whereas he requested the following:

> "*...withheld documents from injury file and all information received on the file since June 16, 2003 – per attached letter John S... dated July 14, 2003.*"

[2] On November 6, 2003, SGI replied by letter to the Applicant, as follows:

> *"Your Access to Information Request Form under The Freedom of Information and Protection of Privacy Act ("the Act") has been referred to my attention...*
>
> *It is my understanding that SGI provided you with copies of your file but, withheld 30 documents concerning internal deliberations and correspondence. In your Access to Information Request Form, you ask that these documents be provided to you.*
>
> *I have reviewed the documents in question and can advise that they are being withheld because they would disclose consultations and deliberations involving officers or employees of SGI. These records are exempt from disclosure by way of subsection 17(1)(b)(i) of the Act."*

[3] On December 2, 2003, our office received a Request for Review form, with attachments, from the Applicant. None of the material provided clearly identified the precise nature of the complaint.

[4] To clarify the request, our office wrote the Applicant on December 29, 2003. Our request was as follows:

> *"This will acknowledge receipt of your Request for Review dated December 2, 2003...We have reviewed the material and correspondence that accompanied your Request but cannot find a copy of your original Access to Information Request Form. Your material raises many different issues but the key is what you originally sought..."*

[5] The Applicant wrote on January 6, 2004 and provided a copy of the form requested. The Applicant did express to us other areas of concern in respect to his file and its management by SGI.

[6] Additionally, our office received another letter from the Applicant on February 4, 2004. The applicant claims, "*SGI has withheld 30 pages of documentation which may provide their reasons for the manner in which they have adjudicated my Injury Claim...I request copies of the withheld documents.*"

[7] Rather than sending a copy of the record to our office, we made arrangements for a meeting between our office and SGI. During this meeting on April 23, 2004, we viewed the 30 documents at issue in respect to this review. After discussing the invoked section in relation to the different records withheld, SGI agreed to reconsider its position on some of the records and provide copies, in full or in part, to the Applicant.

[8] On June 17, 2004, our office received a letter from SGI including a table outlining those 20 records intended for release, in full or in part, to the Applicant. Also included were copies of the withheld documents.

[9] As described by SGI on the above noted table, SGI proceeded to release these 20 documents, as described in the package supplied to our office, to the Applicant on July 29, 2004.

[10] The Applicant did express to us other areas of concern in respect to his file and its management by SGI. However, these issues are outside of the mandate of our office, thus we referred the Applicant back to SGI in order to seek further consideration of any complaints he feels are still outstanding.

II RECORDS AT ISSUE

[11] SGI's June 17, 2004 letter to our office indicated that there were 30 documents initially withheld from the Applicant, 20 of which they agreed to now release, namely:

1. Email between SGI staff dated February 19, 2003
2. Email between SGI staff dated March 7, 2003
3. Letter from CGI (CGI Information Systems and Management Consultants Inc.) to SGI (partial disclosure) dated March 7, 2003
4. SGI file memorandum dated March 19, 2003
5. Email between SGI staff dated March 21, 2003
6. Email between SGI staff dated March 24, 2003
7. Email between SGI staff dated March 28, 2003
8. Email between SGI staff dated April 1, 2003
9. Email between SGI staff dated April 1, 2003
10. Letter from CGI to SGI dated April 7, 2003
11. Fax from SGI to UAB Eisler Co. Ltd dated April 9, 2003
12. Email between SGI staff dated April 10, 2003
13. Letter from CGI to SGI (partial disclosure) April 21, 2003
14. Letter from SGI to UAB Eisler Co. Ltd dated April 22, 2003
15. Letter from CGI to SGI (partial disclosure) dated April 30, 2003
16. Letter from CGI to SGI (partial disclosure) dated May 8, 2003
17. Letter from CGI to SGI dated May 16, 2003
18. Fax from SGI to CGI dated May 21, 2003
19. Letter from CGI to SGI (partial disclosure) dated May 21, 2003
20. Letter from CGI to SGI dated May 27, 2003

[12] In respect to the severed information on the five records mentioned above in paragraph [11], SGI notes:

> *"With respect to the letter of March 7, 2003, we believe that the 4th and 5th paragraphs should be severed before the document is released. For the letter of April 21st, 2003, the second paragraph on the first page should be severed. For the letter of April 30, 2003, the second last paragraph on the second page should be severed. The second last paragraph on the second page of the letter of May 8, 2003, should be severed before releasing. Finally, the last paragraph on page one of the letter of May 21, 2003, following into the first full paragraph of page two, should be severed before release. In each case, SGI relies on s. 17(1)(b)(i) of the Act, as these paragraphs would, in our view, disclose internal deliberations or consultations amongst SGI staff."*

[13] After further discussions with SGI, two additional records were identified as releasable, one in full and the other required the severing of the personal information of two individuals other than the Applicant. The documents released include the following:

1. Letter between SGI staff dated October 24, 2003 (1 page)
2. Letter from CGI to SGI dated September 10, 2003 (1 page); only the portions of the record containing the Applicant's personal information was released. SGI severed information relating to two other SGI claimants on this record.

[14] The remaining withheld documents are as follows:

1. Email between SGI staff dated 4/2/03 (1 page)
2. Email between SGI staff dated 02/04/2003 (1 page)
3. Email between SGI staff dated 4/3/03 (1 page)
4. Email between SGI staff dated March 4, 2003 (2 pages)
5. Letter to CGI from SGI dated June 5, 2003 (2 pages)
6. Fax (2 pages) dated April 2, 2003 from SGI to CGI

III ISSUE

Did SGI properly apply section 17(1)(b)(i) of *The Freedom of Information and Protection of Privacy Act* ("the Act") to the records withheld and sections severed from released documents?

IV DISCUSSION OF THE ISSUE

[15] SGI takes the position that the severed items described in paragraph [12] are exempt from disclosure pursuant to the provisions of section 17(1)(b)(i) of the Act. The section reads as follows:

> *"17(1) Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:*
>
> *(b) consultations or deliberations involving:*
>
> *(i) officers or employees of a government institution;"*

[16] SGI takes the same position as above that the six documents, as described in paragraph [14] are exempt from disclosure pursuant to the provisions of section 17(1)(b)(i) of the Act as well.

[17] Through discussion with the Commissioner's office, SGI agreed to disclose some of the documents previously withheld. On the July 29, 2004 letter to the Applicant, SGI states, "*I have now had the opportunity to review this matter with the Commissioner who reviewed the documents in question. I can advise you that as a result of our meeting with the Commissioner we will now be releasing 20 of those documents...The remaining documents are duplicates or will not be disclosed.*"

[18] Section 17(1)(b)(i) has been earlier addressed in past Reports issued by this office. In Saskatchewan IPC Report 2004-001 [12] states the following:

> *A "consultation" occurs when the views of one or more officers or employees of a government institution are sought as to the appropriateness of a particular proposal or suggested action. (Alberta Order F2003-016 [20]) A "deliberation" is a discussion of the reasons for and against an action by the persons described in this section. (Alberta Order 2001-010 [32]) The records withheld involve either consultation and deliberation."*

[19] Additionally, in the same Saskatchewan Report [13] referenced above, the issue of 17(1)(b)(i) was discussed as follows:

> *"In order to justify withholding a record on a basis of section 17(1)(b)(i), the opinions solicited during a "consultation" or "deliberation" must:*
>
> *a) either be sought or expected, or be part of the responsibility of the person from whom they are sought;*
>
> *b) be sought for the purpose of doing something, such as taking an action or making a decision; and*
>
> *c) involve someone who can take or implement the action. (Alberta Orders 96-006 [p.10], 99-013[48])"*

[20] The severed portions of the records described in paragraph [12] above meet the foregoing criteria, as do the full documents as described in paragraph [14].

[21] The severed record described in paragraph [13] contains the personal information of two individuals other than the Applicant, thus I find were severed appropriately, prior to release to the Applicant.

V RECOMMENDATIONS

[22] I find that SGI has met the burden of proof to justify denying access to the severed parts of the records described in paragraphs [11] and [13]. As such, I recommend that SGI continue to deny the Applicant access to these severed portions of the records.

[23] I find that SGI has properly invoked section 17(1)(b)(i) to deny access to the records described in paragraph [14]. I recommend that access continue to be denied to the Applicant to those remaining six records.

Dated at Regina, in the Province of Saskatchewan, this 6th day of May, 2005.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan